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UTAH DEPARTMENT OF COMMERCE

Division of Public Utilities

MARGARET W. BUSSE
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Division Director

Action Request Response

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Chris Parker, Director
Artie Powell, Manager
Brenda Salter, Utility Technical Consultant Supervisor
Mark Long, Utility Technical Consultant

Date: May 31, 2022

Re: **Docket No. 22-010-T01**, Highlands Water Company, Inc., Proposed Tariff Revisions.

Recommendation (Approve)

The Utah Division of Public Utilities (Division) recommends that the Public Service Commission (Commission) approve Highlands Water Company, Inc.'s (Highlands or Company) request to discontinue the \$5,000 fee per equivalent residential unit (ERU) for water rights sold to new developers (Water Fee).

Issue

On May 16, 2022, Highlands filed a request with the Commission to discontinue its Water Fee. The Commission issued an Action Request to the Division on May 17, 2002, with a due date of May 31, 2022.

Background

The Company received a Certificate of Public Convenience and Necessity (CPCN) Number 1520 on May 28, 1965. The proposed service area includes parts of Morgan County. The service area is supported by two active springs and approved for approximately 600 connections. The Company's last available Annual Report shows that Highlands currently

Division of Public Utilities

Heber M. Wells Building • 160 East 300 South • P.O. Box 146751 Salt Lake City, UT 84114-6741
www.dpu.utah.gov • telephone (801) 530-7622 • toll-free in Utah (877) 874-0904 • fax (801) 530-6512

has 406 residential connections, 10 commercial connections, and five “other” metered connections.¹

In Docket No. 08-010-01, on October 27, 2008, Highlands filed for a rate increase² that the Commission granted in its Report and Order Approving Increase in Rates on June 4, 2009.³ In Docket No. 09-010-01 in May of 2009, the Company filed a request to amend its tariff to include a late fee, service charge, check fee, and a supplementary water fee.⁴ The Commission approved the Company's request in its Report and Order, dated August 5, 2009.⁵

According to Highlands' application in this docket, “On February 24, 2014, in Docket No. 14-010-T01, Highlands requested that the Commission add an infrastructure fee of \$2,675 per ERU to be paid to BNCAAA, LLC, a developer that added excess water infrastructure to be used by Highlands for future expansion. The contract is titled ‘INFRASTRUCTURE DEVELOPMENT AGREEMENT’ (Agreement). Both parties have been honoring this Agreement and wish to continue to do so in the future.”⁶ The tariff, approved in Docket No. 09-010-T01, was amended by attaching the Agreement to the last page of the tariff.

As part of the request made in the Cover Letter of that docket but not included in the Agreement, Highlands requested that it be allowed to charge a Water Fee of \$5,000 per ERU for developers not bringing other acceptable water rights.⁷ The Division recommended that the Commission approve the Agreement and the Water Fee. The Division also noted that “the Morgan County area's market rate for water rights is \$5,000 per acre-foot.”⁸

¹ 2020 Highlands Annual Water Report, p. 3, dated December 9, 2021.

² Docket No. 08-010-01, Highlands request for a rate increase, dated October 27, 2008.

³ Docket No. 08-010-01, Commission's Report and Order Approving Increase in Rates, dated June 4, 2009.

⁴ Docket No. 09-010-01, Highlands Request for Tariff Change, dated May 20, 2009.

⁵ Docket No. 09-010-01, Commission's Report and Order Approving Tariff Changes, dated August 5, 2009.

⁶ Email from Highlands to the Commission dated May 16, 2022. For a history and confirmation of this information see Cover Letter from Highlands, Docket No. 14-010-T01, dated February 25, 2014, pp. 1-4; and Infrastructure Development Agreement, Docket No. 14-010-T01.

⁷ Docket No. 14-010-01T, Cover Letter from Highlands, p. 2, second to last paragraph, dated February 25, 2014.

⁸ Docket No. 14-010-01T, Comments from DPU, p. 2, Water Rights Fee heading, dated March 12, 2014.

Discussion

The Commission approved the fee in that docket.⁹ The Water Fee was not specifically incorporated into Highlands' tariff on file. Highlands requests that the PSC allow it to discontinue the Water Fee primarily because the market price for water rights has changed significantly since 2014. As noted above, if the developer has sufficient water rights acceptable to Highlands, the developer is not required to purchase water rights¹⁰ from Highlands. Based on its review of water right sale listings, the Division agrees that the market for such rights is likely significantly different than the current Water Fee. The low price of the Water Fee threatens to devalue the Company's resources, harming it and existing customers. Discontinuing the Water Fee is in the public interest.

Because, unlike the Agreement about infrastructure development, the Water Fee was never explicitly incorporated into the tariff on file, Commission approval to discontinue the Water Fee should be sufficient to eliminate the fee. No further tariff update is required.

Conclusion

The Division has reviewed Highlands' request and recommends the Commission approve the Water Fee's discontinuance.

cc: Marjalee Smith, highlandswaterco@gmail.com
Highlands president

⁹ Docket No. 14-010-01T, Tariff Approval Letter from Commission.
(<https://pscdocs.utah.gov/water/14docs/14010T01/252365TariffApprovLtrfromPSC4-2-2014.pdf>).

¹⁰ Note that the term "water rights" in this instance is used because the water fee essentially replaces the need for the developer to transfer other water rights to the Company. In actuality, as Highlands noted, the purchase is more akin to compensating the Company for the water resources it has held in reserve to meet future customer needs.